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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 CHANEL, INC.,

4 Plaintiff,

5 v.

18 CV 2253 (LLS)

6 WHAT COMES AROUND GOES AROUND,  
7 LLC, et al.,

8 Defendants.

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9 New York, N.Y.

June 7, 2019

10 2:45 p.m.

11 Before:

12 HON. LOUIS L. STANTON,

13 District Judge

14 APPEARANCES

15 SHEPPARD, MULLIN, RICHTER & HAMPTON

Attorneys for Plaintiff

16 BY: THEODORE MAX

HYO-JIN PARK

17 LEWIS, BRISBOIS, BISGAARD & SMITH

18 Attorneys for Defendants

19 BY: PETER SHAPIRO

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(In robing room)

THE COURT: So tell me what in the case justifies requests of this scope.

MR. MAX: Your Honor, in terms of the discovery requests --

THE COURT: That's what we're talking about, right?

MR. MAX: Yes, in terms of the discovery requests, request one, two and three relate to the sales of the Chanel products, and because not only the claims relate to the Chanel products and how they're sold, the advertising claims, but also the defenses, the affirmative defenses, especially the affirmative defense of the First Sale Doctrine, how they're sold and the method by which those sales are made, whether it's the distributor or how they're sold to public is an important part of this case.

And if you want, your Honor --

THE COURT: Well, now actually the first request is rather baffling, it says, "All documents and communications between any of the defendants and Chanel."

Doesn't Chanel have copies of all those?

MR. MAX: Your Honor, we have some, but the question there was to the extent that there were communications from --

THE COURT: There were indications of what?

MR. MAX: There have been cease and desist letters sent to the defendant, but we wanted to make sure that there

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1 were no other communications of which we were unaware. And on  
2 that request I think the parties have discussed it, and we're  
3 all right on that.

4 THE COURT: Not an issue?

5 MR. MAX: That's not an issue.

6 THE COURT: I see. Which is the first one in issue?

7 MR. MAX: I think it's the second one --

8 THE COURT: Okay.

9 MR. MAX: -- which relates to documents and  
10 communications concerning the Chanel trademarks, Chanel and  
11 Chanel-branded products. And on that, the defendants have said  
12 we got 939,000 emails, and what we have said in the meet and  
13 confers was: Is there a way we can, either by topic area or by  
14 custodian, who received the documents, is there a way we can  
15 narrow that scope?

16 THE COURT: Yes, there is.

17 MR. MAX: Because, for example, we don't want  
18 confirmatory emails saying thank you for your purchase or  
19 orders or things like that. So we have said that.

20 Opposing counsel, as recent as yesterday, said that he  
21 would go back to the client and try to see if they could  
22 identify those categories.

23 THE COURT: It reads, "All documents and  
24 communications concerning the Chanel trademarks, Chanel and  
25 Chanel-branded products." To say that's too broad is to have

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1 contempt for the use of language. It's broad beyond  
2 conception. Under that demand they would have to produce a  
3 copy of the complaint. So it's vacated. That's the way to  
4 trim it. That pattern runs through the questions. And I don't  
5 want hit you from ambush, but it's very rare I have seen a  
6 bunch of requests drawn in this manner.

7 Which is the next?

8 MR. MAX: Your Honor, the next would be the third  
9 request, and that regards documents --

10 THE COURT: All documents and communications  
11 concerning defendants' sale of Chanel-branded products. It  
12 boggles the mind. It goes beyond an audit of the entire  
13 business. It's vacated.

14 Next?

15 MR. MAX: The next is request number five, and that's  
16 communications between defendants and third-party vendors or  
17 consumers with regards to third-party vendors. They have  
18 identified two-third party vendors, and what we have said,  
19 because we have an understanding that there are at least two  
20 and maybe three or four other vendors, Von Maur, Christie's,  
21 Far Fetched and Amazon, who they have not identified as  
22 producing documents relating to those.

23 THE COURT: And you want all communications and  
24 documents between them?

25 MR. MAX: Yes, your Honor.

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1 THE COURT: From the beginning of the world until the  
2 date of the present?

3 MR. MAX: We don't think -- your Honor, with regards  
4 to those vendors, we do not believe that's a large volume of  
5 documents.

6 THE COURT: But whatever they are, you want them all?

7 MR. MAX: Well, your Honor --

8 THE COURT: That's the request. Maybe in the real  
9 world you could live with less, but I'm dealing with a set of  
10 demands before me, and I take it literally, and this format is  
11 going to meet with this reaction routinely.

12 MR. MAX: Your Honor, with regards to those  
13 communications, what we have been focusing on in terms of the  
14 meet and confers is documents relating to advertising relating  
15 to --

16 THE COURT: How does the reader know that? He has to  
17 answer these things under oath.

18 MR. MAX: Well, your Honor, in terms of the  
19 discussions that we have had to try to narrow those --

20 THE COURT: I'm not interested in discussions. You  
21 drafted this document, I read its words, and I'm giving you my  
22 reactions.

23 MR. MAX: Well, your Honor, we can redraft it. We  
24 have had meet and confers on this.

25 THE COURT: I suggest you do, but I am perfectly

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1 willing to sit here with you and do them one by one.

2 MR. MAX: We're fine with doing that as well, your  
3 Honor. As I said, with regards to the second request, we had  
4 narrowed that and we had discussed that.

5 THE COURT: Let me explain really two things to keep  
6 in mind. I'm going to vacate them all but without prejudice to  
7 a properly drafted request.

8 The format here are starts, "All documents and  
9 communications," and that runs through. That's just mindless,  
10 nobody could answer that. Notes, personal letters, things  
11 whose subject and topic have nothing to do with the case, all  
12 demanded, and somebody is going to have to certify we produced  
13 them all. Nobody should face that burden, and no court would  
14 impose it, including the court you're sitting in.

15 Now the second point is this, you drafted these in the  
16 spirit of vacuum cleaning: Just grab them all, suck them in  
17 and we'll sort them out. That's the wrong approach, as you can  
18 see. The better approach, and I'm sure you can find lawyers  
19 who will help you in this process, is to analyze what the  
20 issues in the case really are, what you really need to get to  
21 the necessary proof of your needs with respect to those issues,  
22 and in a lawyer-like fashion draw up a question or a request  
23 addressed to that. That's the way these things should be  
24 written. It's apparent that they aren't. That's why I have  
25 the nerve to suggest it to you.

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1 MR. MAX: Your Honor, no nerve. Unfortunately, I  
2 think both parties -- and we did not make the same objections,  
3 they used similar language, but we will remedy that.

4 Your Honor, with regards to -- certainly we can redo  
5 the requests. With regards to --

6 THE COURT: You say "with regards to." Those words in  
7 themselves display a looseness of thought that is not useful in  
8 litigation. It's okay for conversation.

9 MR. MAX: Your Honor, I was trying to get to a topic  
10 that I think might make sense to discuss, and that's the  
11 request 9 and 31. And one of the issues with request 9 and 31  
12 are that the defendant, with regards to those requests, is  
13 objecting not just on an overbreadth issue but they're saying  
14 they do not want to produce those, because that information is  
15 confidential information of the company in terms of where they  
16 get their products from, who is selling the products and so  
17 forth. And that issue -- obviously we can redraft the request,  
18 but that issue will remain. That's sort of been a point upon  
19 which we have agreed to disagree, and we need the Court's  
20 guidance.

21 THE COURT: Tell me what you think request number 21  
22 is seeking and what's it about and what is your reaction to it.

23 MR. SHAPIRO: I think it was 9 and 31.

24 THE COURT: Oh, 31, I was looking at 21. Let's start  
25 with 9.

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1 All documents -- well, we have covered that --  
2 concerning each defendant's policies, procedures and processes  
3 relating to how each defendant identifies, obtains, acquires,  
4 accumulates, purchases, merchandises and sells Chanel-branded  
5 goods.

6 Now I've read that, I have to confess, and English is  
7 my native language, I don't know what it means. All of your  
8 policies about how you do business?

9 MR. MAX: No, your Honor.

10 THE COURT: That's what it sounds like.

11 MR. MAX: No, what it is focused on --

12 THE COURT: I'm sorry, I cut you off.

13 What do you think it means and why does it bother you?

14 MR. SHAPIRO: Well, I think we agree that it's  
15 overbroad, but I think what they're really trying to focus on  
16 here is what the policies and practices are of my clients with  
17 regard to how they go about acquiring goods that they  
18 believe -- the process by which my client goes about acquiring  
19 goods that they believe are Chanel goods and authenticating  
20 them so they're sure they're not selling any counterfeit  
21 products. I don't think we have a problem with that.

22 THE COURT: You think it's addressing the counterfeit  
23 problem?

24 MR. SHAPIRO: Yes, primarily.

25 THE COURT: I see.



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1 MR. SHAPIRO: We don't think counterfeiting really is  
2 an issue in the case because there's been no allegation that  
3 we're selling counterfeit goods, but authentication is a  
4 legitimate issue in the case. And so I think there's some  
5 willingness to provide documents, to the extent they exist,  
6 about the policies.

7 I think that the rub that we have comes into when you  
8 combine it with number 31, because what they're really looking  
9 for is for my client to identify the companies and the  
10 individuals from which they acquire these products.

11 THE COURT: The sources.

12 MR. SHAPIRO: The sources. And that's what we are  
13 very sensitive about, and we believe this case is in part  
14 motivated by an improper purpose, which is to ferret out who  
15 those are to basically try to crush this business of selling  
16 secondhand Chanel products.

17 THE COURT: What do you see as the issues in the case?

18 MR. SHAPIRO: Well, I think the claim is that we're  
19 trying to pass ourselves off as Chanel, in effect, the primary  
20 claim, even though we're not Chanel.

21 THE COURT: That's what I understood it to be, but  
22 maybe I was oversimplifying it.

23 What do you see as the claim in the case, or claims?

24 MR. MAX: I think certainly creating that association  
25 with Chanel is one of the major points.

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1 THE COURT: I think that should be relatively easy to  
2 resolve. They seem to be clinging to any error along that line  
3 in their favor.

4 MR. MAX: I think the other big issue is how the  
5 products are sold and how the defendants represent themselves  
6 to the public.

7 THE COURT: What business is that of yours?

8 MR. MAX: Well, if they're selling -- I will give you  
9 an example, your Honor. If they're selling products that are  
10 not authentic Chanel products --

11 THE COURT: What's your position? Are they doing it  
12 or not?

13 MR. MAX: With regards to certain products, they have  
14 identified products like point of sale materials, like a tray  
15 that might be used at Saks Fifth Avenue, and they're  
16 representing that that is a Chanel product.

17 THE COURT: Is it not?

18 MR. MAX: It is not a product, your Honor.

19 THE COURT: Who made it?

20 MR. MAX: A vendor makes it, and it's used as a point  
21 of sale item.

22 THE COURT: I see.

23 MR. MAX: With regards to counterfeit goods, we have  
24 some information, but because the defendants do not put serial  
25 numbers on their website it's very difficult to make a

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1 determination whether there's real or there's counterfeit.

2 And there's another issue with regards to Chanel  
3 goods, and that's stolen goods. There are a number of thefts  
4 that happen around the world, and so if there were stolen  
5 goods, those are the reasons, in terms of the source  
6 material --

7 THE COURT: What is your proof that they have sold  
8 counterfeit Chanel products?

9 MR. MAX: We have --

10 THE COURT: By "counterfeit," I'm speaking in the  
11 copyright law meaning of the word, which is something so like  
12 that it is extremely difficult to tell it. Under the copyright  
13 law, something that Chanel made but wasn't planning to sell I  
14 don't think is a counterfeit.

15 MR. MAX: Your Honor, if they are selling something  
16 that is not for sale to the public, it may not be a counterfeit  
17 but it would be misrepresenting the goods to the public.

18 THE COURT: But you're characterizing it as a  
19 counterfeit. That's the problem.

20 MR. MAX: Certain sales we believe are counterfeit, so  
21 there have been some products that we believe are counterfeit.  
22 There are other goods that have been misrepresented as to what  
23 the goods are, so that's more an unfair competition claim.

24 THE COURT: Whatever it is, but it's not a  
25 counterfeit. "Counterfeit" is a word of art.

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1 MR. MAX: We did not bring a counterfeiting claim, we  
2 brought unfair competition claims. We think there might be  
3 counterfeits. We do not have that evidence.

4 But there's a line of case law, and I'm happy to give  
5 your Honor cases with regards to the issue of discovery as to  
6 the sources, discovery as to where the products come from. And  
7 basically those cases provide that, especially under the new  
8 Federal Rules, Rule 34, that if an affirmative defense is  
9 asserted with regards to the First Sale Doctrine, meaning it  
10 was sold properly so now I can resell it, that that implicates  
11 those questions and that that discovery is proper.

12 THE COURT: As to the first sale.

13 MR. MAX: No, as to how the defendant got the goods.  
14 The first sale, ostensibly, if it's a genuine good, for the  
15 First Sale Doctrine to work, would be that Chanel sold the  
16 product.

17 THE COURT: Yes.

18 MR. MAX: And with a defendant and with certain  
19 products -- for example, snow globes, there are snow globes  
20 that have been sold by the defendants. Chanel has snow globes  
21 that are distributed to special people, but we cannot tell  
22 whether those snow globes, for example, are authorized product  
23 or maybe they're counterfeit or maybe they're product that was  
24 stolen or went out the back of the factory, that they're  
25 unauthorized goods. If they were stolen or unauthorized goods,

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1 those would mean the First Sale Doctrine would not apply. So  
2 that's why when the First Sale Doctrine is asserted, the case  
3 law provides that it's fair and reasonable and relevant for the  
4 defendant to provide that information. Obviously, to the  
5 extent that it's under a protective order or something like  
6 that, courts have recognized that.

7 THE COURT: And the fit between that and the language  
8 of number 9 is a very poor fit indeed. Maybe you could ask  
9 questions about what you have been telling me about, but that's  
10 not done in 9.

11 MR. MAX: I think 9 is more with regard to because  
12 they say we 100 percent guarantee.

13 THE COURT: Where you are then, 31?

14 MR. MAX: I think it's more 31.

15 THE COURT: All documents and communications relating  
16 to the sources. I see. That is to say, how were they found  
17 and what were the negotiations of the relationship and  
18 everything else, amount of business, type of business. None of  
19 this fits under your complaint.

20 MR. MAX: Your Honor, I believe the request 31 does  
21 fit.

22 THE COURT: I'm reading it. That's the language I  
23 have in front of me, "relating to the sources." You say I need  
24 to know that to determine the application of the First Sale  
25 Doctrine.

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1 MR. MAX: Well, it relates to the defense, their  
2 assertion of a First Sale Defense and attacking that defense.

3 THE COURT: Every time you or any lawyer uses the word  
4 "relates" to, my ears close, because I know I won't understand  
5 the rest of what he is saying.

6 MR. MAX: Your Honor, let me rephrase then.

7 THE COURT: Yes.

8 MR. MAX: The first sale doctrine is an assertion that  
9 there was a legal sale that predicated --

10 THE COURT: Supposing you ask them for every document  
11 for which you claim the first sale, identify the person from  
12 whom you bought it. Isn't that what you want?

13 MR. MAX: Yes, your Honor.

14 THE COURT: Compare that with the language of 31.

15 MR. MAX: Well, I think the other point is to add to  
16 it where they're selling a product, so their offering for sale  
17 would be included, but --

18 THE COURT: Sounds like two questions to me.

19 MR. MAX: Maybe it is. Maybe it's better to ask two  
20 questions, your Honor.

21 THE COURT: Would you have a valid objection to that  
22 request, the way it's phrased?

23 MR. SHAPIRO: Again, I think the concern here is that  
24 this is a fishing expedition where they're trying to identify  
25 who the sources are.

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1 THE COURT: The answer to that question would disclose  
2 the source, but how can you get around it if you're claiming  
3 first sale?

4 MR. SHAPIRO: Well, I think that if we're able to  
5 authenticate that they are legitimately Chanel products,  
6 doesn't matter where we got them from, we got Chanel products,  
7 we have procedures that we utilize to make sure they're not  
8 stolen and they're authentic.

9 THE COURT: If they're loose in the market they must  
10 have been sold to somebody.

11 MR. SHAPIRO: Well, it is possible that there are  
12 goods out there that are stolen, but by virtue of our  
13 procedures to avoid being in the business of selling stolen  
14 goods, which is bad for our business, we take a lot of steps to  
15 make sure we're not buying from those people who are known to  
16 be out there marketing things that are stolen, suspect sources,  
17 particularly from overseas, we take a lot of steps. And it's  
18 not just Chanel, my client sells a lot of different brands and  
19 has a robust policy and practice to stay on the right side of  
20 the law about that. So the concern is that Chanel will use  
21 this information to shut down their supply chain.

22 THE COURT: What harm is there in knowing your  
23 sources?

24 MR. SHAPIRO: Again, I think the concern is that if  
25 the client Chanel knows this, they're going to use that

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1 information to try and shut down our supply chain and tell  
2 these people if you keep selling to this company, we're not  
3 going to like that and that's going to be problematic for our  
4 relationship with you and that's going to be devastating to our  
5 business.

6 THE COURT: Yet Chanel does not sell any used products  
7 themselves, so they're not competing.

8 MR. SHAPIRO: It's not a question of competition, it's  
9 a question of they may have relationships with certain  
10 companies that sell to us they can then muscle and say we're  
11 very unhappy that you're selling to this company and you're  
12 involved in this market that we don't believe should exist, and  
13 try to shut them down, and the other "or" is a lot of companies  
14 like Chanel now are getting into the business saying if you  
15 can't beat them, join them, and are going to be doing their own  
16 efforts to market secondhand goods, that they will basically  
17 use our information about who the sources are to cut us out of  
18 the market. And that would be, in my view, a misuse of the  
19 legal process to do that. So at a minimum we would want this  
20 information limited to the attorneys. If it has to be turned  
21 over, it should be attorney's eyes only.

22 THE COURT: I think I'm not going to rule on the  
23 source question this afternoon. There's more to that than the  
24 mere discovery issue. Although I may, if I ask permission, say  
25 it's related, they are related.



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1 MR. MAX: Your Honor, on that point --

2 THE COURT: I think I would like to have that question  
3 about source separately argued with probably proof of what's  
4 going on, the facts and the law. It's not just a discovery  
5 question, it's an important one.

6 MR. SHAPIRO: Very good.

7 MR. MAX: Your Honor, certainly we're happy --

8 THE COURT: You say there are lots of cases, but I  
9 haven't read them.

10 MR. MAX: I could provide those to the Court.

11 In terms of just to respond to what Mr. Shapiro said,  
12 he basically said we authenticate them, we have this process  
13 and trust us.

14 THE COURT: And they stand behind the authentication.

15 MR. MAX: Right.

16 THE COURT: You would think that as a business matter  
17 that was a sufficient answer.

18 MR. MAX: Well, in terms of asserting --

19 THE COURT: In other words, they are putting  
20 themselves at risk on that assertion.

21 MR. MAX: But I think, as a part of discovery, Chanel  
22 should be permitted the opportunity to get behind that in terms  
23 of those policies and procedures --

24 THE COURT: Why?

25 MR. MAX: -- and the sources.

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1 THE COURT: Why? If they authenticate it, why is  
2 there attack of the validity of the authentication?

3 MR. MAX: Why would there be? Because they say they  
4 authenticate it, that doesn't necessarily mean that. And as I  
5 said, your Honor, we have found some examples where, for  
6 example, they identify a product as a Chanel smart phone case,  
7 and that particular product was created when smart phones were  
8 not in existence, so whoever did that --

9 THE COURT: Who created it?

10 MR. MAX: Chanel, but it was an eyeglass case, so it's  
11 misidentified as to what the product is. So for example, if  
12 that's somebody who is an expert at authenticating a product,  
13 they have misauthenticated it.

14 And so the whole point here, in terms of requests for  
15 production 9, which goes to how do you do that  
16 authentication --

17 THE COURT: If they had called it an eyeglass case,  
18 you would have no objection?

19 MR. MAX: That's correct, your Honor, that would have  
20 been accurate. And that goes to the false advertising aspects  
21 as opposed to some of the other aspects that we have been  
22 talking about.

23 But also with regards to where products come from, if  
24 products have been stolen or they're non-authorized goods, that  
25 is -- and I'm not saying this is the case, but it happens in --

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1 THE COURT: What does "non-authorized" mean?

2 MR. MAX: Non-authorized would be, for example, a  
3 factory that's making products and they're not approved by  
4 Chanel but they're selling them out the back door, that would  
5 be non-authorized. Or non-authorized would also be a product  
6 that is in a Chanel store and someone drives -- and this has  
7 happened -- someone hijacks a truck and steals the product,  
8 that would be unauthorized goods as well, because they're  
9 stolen goods. So those would be two examples of unauthorized  
10 goods. And so the source --

11 THE COURT: But even though stolen, they still would  
12 be genuine Chanel products.

13 MR. MAX: But if they have not been approved and they  
14 have not been authorized because they have been stolen, like  
15 going from the factory before they're approved, that would be  
16 non-authorized goods.

17 THE COURT: Genuine, but not authorized for sale.

18 MR. MAX: It depends. If you're stealing goods out of  
19 a store, those are not authorized either. The sale is not by  
20 Chanel, it's by --

21 THE COURT: Is that a part of this case?

22 MR. MAX: We don't know, your Honor, and that's why  
23 I'm asking for the discovery.

24 THE COURT: When you're asking questions to discover  
25 whether you have a claim or not, you have to be very, very

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1 gentle and unobtrusive in the phrasing of those questions,  
2 because otherwise it is a fishing expedition, but you're  
3 fishing not for evidence of your claim, you're fishing for a  
4 claim.

5 MR. MAX: Well, your Honor, with regards to -- we do  
6 know that Chanel goods have been stolen, so we do know that.  
7 We have no information with regards to where their goods are  
8 coming from. And as your Honor said, if there's a  
9 confidentiality order in place, there should be no problem with  
10 producing information with regards to sources.

11 And the comment about --

12 THE COURT: Confidentiality order.

13 MR. MAX: The comment about muscling, that Chanel  
14 would muscle companies, there's no basis for that either. And  
15 for example, if goods are distributed or sold by Chanel or  
16 they're manufactured by Chanel and they're non-authorized, for  
17 example, the factory that's making excess goods and selling  
18 them out the back door, those would not be authentic goods. I  
19 could understand if that's a source of defendants' goods, that  
20 would be problematic for them, and they would lose that source,  
21 but that's part of discovery.

22 As I said, your Honor, there are a number of cases  
23 that deal with not only this type of issue, but deal with  
24 diversion issues where these issues --

25 THE COURT: Gray market.

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1 MR. MAX: Yes, where the courts have said if First  
2 Sale Doctrine is your affirmative defense, then the plaintiff  
3 is permitted to check that chain, check that supply chain and  
4 determine whether indeed the First Sale Doctrine applies;  
5 otherwise we're taking them at their word, which is not proper  
6 discovery. And there's been no assertion of a burden here  
7 other than --

8 THE COURT: The First Sale Doctrine requires a first  
9 sale, and if the things are stolen out of the factory, no sale  
10 has taken place.

11 MR. MAX: Right, so the defense would not apply.

12 THE COURT: That's correct.

13 MR. MAX: Correct.

14 THE COURT: There may be ways of discovery that  
15 disclose that, but it's not these ways. We're here to discuss  
16 the -- all our conversation now is cautionary towards your next  
17 questions.

18 MR. MAX: I'm not sure I'm following.

19 THE COURT: Now we're talking about what can you do in  
20 your next trawling.

21 MR. MAX: I understood that, your Honor. The reason I  
22 was raising this --

23 THE COURT: So in a sense it's hypothetical.

24 MR. MAX: Well, the reason I was raising this point  
25 was this was a point where they said absolutely positively we

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1 will not give you that information, so it was a hard and fast,  
2 not it depends on the language. It was like there's no way  
3 we're giving you any information about source, and with regards  
4 to authentication, it was basically the sale.

5 THE COURT: When that is presented in a question that  
6 properly inquires into source, then I will have something  
7 before me I could decide, but simply arises under a question  
8 that says all communications of any nature or whatever, it  
9 doesn't present that issue. It's bad in form and it's vacated.

10 I'm not indicating any ruling on source because I  
11 think it has its complexity, and frankly I have no real prior  
12 experience with it, so you're writing on a fairly blank tablet  
13 and I need cases of law and briefing.

14 MR. SHAPIRO: The discussion has been very amplifying  
15 nonetheless, and I think it will be helpful as we move forward.

16 THE COURT: My instinct as an old trial lawyer is that  
17 the question really turns on the need for proof that there was  
18 a prior sale. That implies some burden on you which may carry  
19 with it some burden of disclosure, but I don't know enough  
20 about it to rule.

21 MR. SHAPIRO: Very well.

22 THE COURT: Have a nice weekend.

23 MR. MAX: Your Honor, given the discussion that we  
24 have had today, and we have conferred with defendants' counsel  
25 about this, we would like the Court to extend the discovery

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1 cutoffs.

2 THE COURT: Where is the schedule?

3 MR. MAX: I can give you a copy of my schedule.

4 THE COURT: Sure. Let's look at that and see what you  
5 need.

6 Now this is December 7, last December 7.

7 MR. MAX: And the discovery cutoff runs at the end of  
8 June.

9 MR. SHAPIRO: Fact discovery.

10 MR. MAX: In talking to defense counsel, we thought  
11 extending this 120 days across the board makes sense.

12 THE COURT: The first date in this table is March 29,  
13 2019, so we had that, and it says production of the documents  
14 by the parties should be substantially completed.

15 MR. MAX: Which discovery is not substantially  
16 completed.

17 THE COURT: It says April 1, 2019, commencement of  
18 party depositions. What's happened along that line? Nothing.

19 MR. MAX: That's right.

20 THE COURT: June 28, that's at our throats, completion  
21 of fact discovery, not a chance.

22 MR. MAX: That's correct, your Honor.

23 THE COURT: There's no compliance with this at all.

24 MR. MAX: Well, we have been trying to deal with these  
25 issues, and obviously, through the -- if you reviewed the

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1 correspondence, there were a number of meet and confers, but  
2 yes, that's why we need additional time, and especially with  
3 preparing new discovery requests, obviously we'll need  
4 additional time.

5 THE COURT: Yes. And furthermore, you've created an  
6 atmosphere in which an ignorant observer might conclude that  
7 Chanel was using the litigation to harass and over-investigate  
8 a small thorn in its business side.

9 MR. MAX: Your Honor, that is not the case.

10 THE COURT: I would never entertain that thought, but  
11 I'm saying that impression is created.

12 MR. MAX: I apologize, because I don't think that's  
13 the impression, but I understand what your Honor is saying.

14 THE COURT: In the cool of the evening, read your  
15 requests for production.

16 MR. MAX: Your Honor, unfortunately I think the  
17 requests of the other side are very similar. We didn't bring  
18 it to the Court's attention, we tried to work it out.

19 THE COURT: Then it will appear that they're harassing  
20 you.

21 MR. MAX: Maybe it's everybody is harassing everybody  
22 else. But that being said, your Honor, in terms of that  
23 approach, I mean on Chanel's part we basically have said we'll  
24 produce documents, and we didn't stand fast and say -- we tried  
25 to work out --



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1 THE COURT: Realize in pursuing the policy and not the  
2 search for evidence in the case, the thing to do is figure out  
3 what you need for trial and what you need to rebut and then go  
4 for that, and that is what excites sympathy in the observer,  
5 because these people are trying to defend themselves in order  
6 to process that claim.

7 MR. MAX: Certainly that's the case, this is a search  
8 for truth. And obviously with regard to, for example, the  
9 source information, if you are raising an affirmative defense  
10 of First Sale Doctrine but you're unwilling to explain how you  
11 authenticated the goods or where they came from, that's the  
12 search for truth that we want. And we take your words and your  
13 advice with regards to redrafting to heart, and we'll deal with  
14 that.

15 THE COURT: I think you obviously need time. Of  
16 course I will give it to you, but I would like to see the  
17 discovery on both sides proceed in that philosophy.

18 MR. MAX: Understood.

19 THE COURT: Rule 1 of the Federal Rules I think says  
20 that all of the rules shall be administered to obtain the just,  
21 speedy, and inexpensive determination of every action. That's  
22 not just viewed or interpreted, it means they should be  
23 administered that way, and so I consider that one of my  
24 responsibilities.

25 MR. SHAPIRO: Inexpensive is a hard responsibility

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1 these days with litigation having become so expensive.

2 THE COURT: No, I'm assisted by very good lawyers.

3 Now what do you need for time?

4 MR. SHAPIRO: 120 days is what we agreed --

5 THE COURT: 120.

6 MR. SHAPIRO: -- beyond the current deadlines is what  
7 we agreed would be appropriate.

8 THE COURT: Four months. Okay. Well, I think what  
9 I'll do is enter an order saying that the defendants' requests  
10 for production dated whatever are vacated and all dates in the  
11 December 7 schedule are extended by four months and then state  
12 what the new dates are.

13 Will that do it?

14 MR. MAX: So long as it's vacated with leave to  
15 propound --

16 THE COURT: Without prejudice, yes.

17 MR. MAX: Then we'll get those --

18 THE COURT: I'm not trying to cut off inquiry, I'm  
19 trying to improve it.

20 MR. MAX: We will prepare and improve it and serve  
21 them forthwith.

22 THE COURT: Great.

23 MR. SHAPIRO: Thank you.

24 (Adjourned)

25